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IN THE CRIMINAL COURT FOR SUMNER COUNTY, TENNESSEE
AT GALLATIN

STATE OF TENNESSEE)	
)	
)	NO / CR875-2017
vs.)	CR133-2020
)	CR548-2017
)	
ANDY LAMAR ALLMAN)	

TRANSCRIPT OF PROCEEDINGS
April 2, 2020
VOLUME I OF II

THE HONORABLE DEE DAVID GAY PRESIDING

LORI C. BICE, LCR
Criminal Justice Center
117 W. Smith Street
Gallatin, Tennessee 37066
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Exhibit H

1 90-day window. We're looking at a 90-day window,
2 and the risk to the public in this 90-day window, to
3 me, is not great enough in this 90-day window to
4 outweigh the benefit of having the house arrest at
5 this time based on the nature of this case and the
6 fact that we've got -- we've got -- all the gears
7 are running hard right now to try this case in
8 August.

9 And the Nashville case, it's going to
10 be tried in July, and the outcome from that case may
11 make the point of house arrest moot. I don't know.
12 But, again, we're looking at a very small window
13 here, Your Honor, and that's -- I think that needs
14 to be weighed heavily. Thank you, Your Honor.

15 THE COURT: All right. I want to
16 thank the attorneys for your professionalism, the
17 way you presented your proof, and how you've handled
18 this whole hearing for two days. I didn't know much
19 of anything about this case and I've learned pretty
20 much the last couple of days. I've never seen
21 anything like it.

22 And let me temper my comments here.
23 I'm making my rulings and statements according to
24 the evidence that I've heard the last couple of
25 days. I'm not making any final judgment. I'm

1 called upon to rule on a motion to reduce bond. I'm
2 called upon to rule on a motion to revoke the bond.
3 And to that extent we have had a lot of evidence
4 introduced, and my comments are a reflection on the
5 evidence that has been presented to me up to this
6 time and point in this particular case. I know
7 there's more to come, more to hear, but I am limited
8 to what I've heard up to this point along with the
9 legal issues.

10 We'll start with the statute in the
11 motion to reduce -- in the motion to revoke the bond
12 and the motion to reduce the bond. We will take
13 them altogether because a lot of the issues are the
14 same. But on the Burgins issue, as I said
15 yesterday, 40-11-141, it authorizes the trial judge
16 to hold a defendant without bail pending trial,
17 without release if the defendant violates a
18 condition of the release or is charged -- and
19 "charged" is the key word there in the statute --
20 charged with an offense committed during the
21 defendant's release.

22 Now, Burgins says if the trial court
23 finds that the State has shown by a preponderance of
24 the evidence that the defendant has violated a
25 condition of the release and committed a criminal

1 offense while on bond, the trial judge may either
2 revoke bail and hold the defendant until trial to
3 continue bail -- or continue bail with a possibility
4 of additional conditions or an increased bond
5 amount.

6 The first thing I want to comment on
7 is the proof that I have heard today about the crime
8 that was committed while the defendant was on bail.
9 And in this particular matter the evidence I've
10 heard is overwhelming. We've heard from the
11 defendant [sic] by phone in Florida, Mr. Herrera.
12 We went through his history, and it sounds like a
13 lot of what's gone on with these 30, 29, 28 cases
14 that we have pending in this court. We have pending
15 three counts of theft over a thousand dollars, 12
16 counts of theft over 2500, two counts of theft over
17 \$60,000, two counts of theft over \$10,000, seven
18 counts of falsely representing himself as a lawyer,
19 one count of impersonating a licensed professional,
20 and one count of practicing without a license. And
21 then we've got another C felony with Mr. Herrera and
22 another issue about holding himself out as a lawyer.

23 Now, same M0. The victim was going
24 through a divorce. He retained Mr. Allman. I don't
25 know where -- anywhere here, according to his

1 testimony, there was ever any comment or language
2 about a fee, and I know that's what an attorney
3 works for, but according to the testimony there was
4 none. He was satisfied with the results of the
5 divorce, and then the house got sold and he was to
6 get one half of the \$120,000.

7 Now, it looks like from the proof
8 today that the defendant -- or excuse me, the
9 victim, there was an order to return this money to
10 the defendant [sic] when the divorce was final. We
11 heard the -- we've got a copy of that order, 2014.
12 The next day the defendant cashed this check and
13 placed it into his account and then he wrote a check
14 and put it in another account.

15 Mr. Herrera testified from 2014 until
16 2/5/20, six years, he had not received anything. He
17 began calling the defendant -- and I think it's
18 pretty credible that he was told by the defendant to
19 call or check on it when his daughter was about --
20 was past age 18. And on 5/20/19 was her graduation.
21 On 8/3/19 was her birthday, and he called two weeks
22 later to get the money, and from that period of time
23 on until he talked to Stephanie Boiano at the DA's
24 office he was under the impression, still after five
25 years, that he was going to get his money. He

1 didn't know that it had already been taken care of.

2 Now, his credibility is borne out by
3 text messages I see that Mr. Allman is carrying out
4 a charade, a lie, and a fraud, and according to the
5 testimony of Mr. Herrera he didn't say he couldn't
6 practice law; he didn't say what his fee was; he
7 said he was working on it as if nothing was wrong.

8 Now, conclusion, you've got the check,
9 you've got the money trail, and all the evidence
10 from the bank. I find by a preponderance of the
11 evidence the testimony has shown that he committed a
12 theft and that he held himself out as an attorney.

13 Now, in considering that, I must
14 consider now whether the bond should be increased,
15 whether the bond should be left the same with
16 different conditions and so forth. And I look at
17 different factors that the Supreme Court has set out
18 and the Court wants me to look at 40-11-118 in
19 considering what to do here, in considering danger
20 to the community, in considering the likelihood that
21 he will not show up for trial. Those are the two
22 concerns that we have.

23 Sometimes we focus only on whether or
24 not the defendant is going to show up, but case law,
25 statutory law shows that there's that second factor

1 here. You know, it's about that public out there,
2 the safety to the public, and one of the things I've
3 got to consider is 40-11-118, and we've gone through
4 those.

5 The first factor here, the defendant's
6 length of residence in community is good. He's been
7 here his life -- entire life. His employment status
8 history, financial condition, that's not good. Any
9 way you stretch it it's not good. His law firm went
10 through receivership. Claims against him from at
11 least 222 clients total \$1.1 million. There's
12 evidence that he's having difficulty paying a
13 mortgage. There's evidence that one time he filed
14 bankruptcy, although that was dismissed. So the
15 financial condition, employment status, not good,
16 not good.

17 Family ties and relationships, I
18 looked at all the letters. They are good. He is
19 married a second time, got two children from his
20 first marriage, and he's been married this time six
21 years, and that is fine.

22 I've got a concern with the next
23 condition, his reputation, his character, and his
24 mental condition. I think the overall reputation is
25 poor; character, poor.

1 Mental condition, I'm going to be
2 honest with you. That really bothers me. What in
3 the world is going on here from a man that had a
4 good practice, a good reputation, no issues,
5 suddenly in a period of time we've got a major
6 meltdown that affects all of Middle Tennessee where
7 his clients reside? Up to this point, I have had no
8 explanation as to what was going on.

9 I do not accept the premise from
10 Mr. Willis that things got out of hand. There is
11 too much here in the record putting off clients,
12 neglecting clients. Yes, that's ethical situations,
13 but then we move to lying to clients, shifting money
14 that the defendant is not entitled to, and at least
15 at this point in time we've got 222 claims,
16 \$1.1 million, and that just doesn't happen by
17 accident. It doesn't. Mr. Allman is too sharp an
18 individual to fail accidentally to this extent, and I
19 don't know what is going on with him mentally. I've
20 got a major concern there, and I don't have any
21 explanation, and we'll wait, I guess, to the trial,
22 but up to this point there is no excuse from what I
23 have seen from the evidence of anything. I
24 understand that we might have issue with some
25 retainers and I'll get to that in a minute, but the

1 overall situation really disturbs me.

2 Prior criminal record and record of
3 appearance at court proceedings, good. Apparent
4 probability of conviction, strong.

5 Now, Mr. Copas talked about some of
6 the retainer claims, and I don't know what's going
7 to become of them. The same MO, same thing, it's, I
8 don't give a rip about these clients and I'm not
9 going to take care of them; I'm not going to answer
10 them; I'm going to lie to them; I'm going to put
11 them off. I'm going to be the same way with the
12 Board of Professional Responsibility. And he was
13 disbarred three times over the way that he conducted
14 business. Unbelievable. That is completely
15 unbelievable.

16 If you consider the strength of the
17 proof here, you go through all those retainer cases
18 and you wonder what's going on. How can you have,
19 what is it, 23, 20 people have this kind of an issue
20 with this defendant?

21 And then look what we've got in
22 addition to that. You've got these cases with theft
23 of funds. They're not retainer cases. Rosa Ponce,
24 \$14,694. Floyd Kenneth Sutton, \$16,433. Same
25 story, same plan, going to get my money. No, you're

1 not. Mr. Allman has taken it. Sorry. I'll put you
2 off, I'll not answer you, and I'll just let things
3 fly.

4 Client estate funds. \$108,077 of
5 Brenda Sue Ingram, no explanation. Estate of Jane
6 Ellen Denney, \$106,403, no explanation.

7 And then the testimony we heard on the
8 motion to sever, that poor lady on that estate down
9 in Nashville, you cannot help but get emotional,
10 Mr. Allman, at \$230,000 that was hers that you took.
11 No explanation. The proof is strong, very strong.
12 The likelihood of conviction in over 50 percent of
13 these cases is great.

14 Now, I don't know -- that's another
15 thing that bothers me about Mr. Allman. He seems
16 not to let anything affect him. He's every second
17 looking to correct his attorney or write things
18 down, or whatever, but I have not heard anything,
19 and I just don't know what's going on mentally
20 there.

21 Now, the case is strong, and in
22 considering the public safety here, you've got to
23 look at the fact that Ms. Cheryl Garrett said, are
24 you still my lawyer? Yes.

25 You've got to look -- here he is in

1 2017. The TBI is serving search warrants. He's
2 been suspended for years. TBI called, talked to his
3 mother and wife, and he says, I'm unavailable. I'm
4 meeting with a client. There's a lot to what the
5 General says that nothing is going to stop him.
6 What's house arrest going to do to him if he's got a
7 phone?

8 Considering the safety of the public,
9 Russ Willis, unbelievable. I don't know how the
10 Board of Professional Responsibility got it all
11 together. They did a very good job in going through
12 these cases and presenting these different petitions
13 and trying to protect the public from an attorney
14 that appeared to be out of control. Contempt,
15 receiverships, temporary suspension. Three
16 petitions, 208 claims; the fourth petition pending,
17 14; 222 claims. Now, some of these things were gone
18 through. Some were eliminated, but that's where we
19 stand right now.

20 And I don't care how you want to spin
21 this, you can't spin it. From the end of 2015 until
22 7/30/2018, there was this area where I don't know
23 what's going on with the practice of law with
24 Mr. Allman and his life. It affected state trial
25 courts, it affected federal courts and -- to the

1 tune of \$1.1 million. That does not include the
2 causes of actions that were destroyed, lost, or
3 other areas.

4 6/19/18, the first disbarment;
5 7/13/18, the second disbarment; 7/30/18, the third
6 disbarment, and yet we heard the testimony today
7 from Mr. Herrera. It doesn't appear that Mr. Allman
8 gives a rip about the rule of law, about discipline,
9 or about following orders that anybody wants to make
10 about his practice of law. And you want to see
11 behind the damage that is done, it's like Sherman
12 going through Georgia, destruction.

13 The complaints, the millions of
14 dollars, so bad that the Board had to file a
15 petition for receivership. Mr. Willis stated that
16 the numbers became so great they were overwhelming.
17 His response initially, promises about getting the
18 documents, I'm talking to my clients, all a
19 misunderstanding. And it's all about earning fees.
20 All I can say is what I've heard up to this point,
21 baloney.

22 We've got a situation where Mr. Allman
23 was so bold as to continue to practice law to where
24 with his dealings with Smelser and Kelley he was
25 held in contempt in the proceedings by the Board of

1 There is no excuse, no excuse.

2 And I've considered reducing the bond.
3 I've considered adjusting the bond. I have kept all
4 my options open through this hearing, but I can't
5 help but think in the short period of time and the
6 damage that's done and whether or not anybody will
7 ever recover, and the fact that he makes bond and he
8 goes out and continues indicates to me that Sherman
9 is still continuing through Georgia and destruction
10 is still going on while the defendant was out on
11 bond. I don't know what else we can do but put
12 somebody out on bond with restrictions, and to
13 violate the law and to be an attorney and to do this
14 intentionally goes straight to the heart of justice,
15 and it goes straight to the heart of safety of the
16 public from attorneys that might possibly be
17 criminals. We still have a way to go yet. But,
18 again, I'm only commenting and referring to the
19 proof I've heard to this point.

20 Mr. Allman, based on everything that I
21 have just said, based on the restrictions and the
22 law as laid out by Burgins, I find that there is a
23 preponderance of the evidence that you've committed
24 two crimes, one while you were out on bond and the
25 other one was part of a fraud and cover up and

1 Professional Conduct [sic], 10 days for each charge.
2 That didn't stop him. It didn't stop him one bit.
3 He's still going on, and before he was arrested
4 there's no telling what he was doing, but we do know
5 that he was still leading Mr. Herrera on, and
6 leading him to believe that his case was still
7 pending, that he still mattered, not knowing that
8 Mr. Allman pocketed the money four or five years
9 ago. And there's no way any fee for what he did
10 would amount to the \$59,000 that he took.

11 Now, we've got to protect the public
12 from many things. We've got to protect the public
13 right now from this virus. We've got to protect the
14 public right now from violent crimes and repeat
15 offenders. Every 50 minutes somebody is killed on a
16 highway by somebody driving under the influence,
17 killed in this country. There are all kinds of
18 dangers.

19 You look at the public. Do you
20 remember what was said in the Declaration of
21 Independence? Life and liberty and the pursuit of
22 happiness. Anybody that's been touched as a client
23 under these circumstances has been devastated and
24 the proof shows that while the defendant was on bond
25 he continued his deceptive practices and fraud.

1 continuation of a crime that you committed some time
2 ago. You are a danger to the public if you are out.
3 Your bond is revoked, sir, and you will be held in
4 custody until this trial. That will be the order of
5 the Court.

6 Anything else that we need to take up?

7 GENERAL DEAN: No, sir.

8 THE COURT: We may be in recess.

9 (Proceedings concluded at 3:15 P.M.)
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